

Senate Bill No. 1181

CHAPTER 68

An act to amend Section 22062 of the Financial Code, relating to lending.

[Approved by Governor June 28, 2014. Filed with
Secretary of State June 28, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1181, Correa. Finance lenders.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers. The California Finance Lenders Law exempts commercial bridge loans from the application of its provisions and defines a commercial bridge loan to require, among other things, that the loan have a maturity date not to exceed one year, as specified.

This bill would exempt from the California Finance Lenders Law a venture capital investment made by a venture capital company in an equity security, as defined, issued by an operating company, would revise the definition of commercial bridge loan to extend the permitted maturity date to 3 years, and would make a technical, nonsubstantive change.

The people of the State of California do enact as follows:

SECTION 1. Section 22062 of the Financial Code is amended to read: 22062. (a) This division does not apply to either of the following:

(1) A commercial bridge loan made by a venture capital company to an operating company.

(2) A venture capital investment made by a venture capital company in an equity security issued by an operating company.

(b) For purposes of this section:

(1) "Venture capital company" means a person other than an individual or sole proprietorship that meets all of the following:

(A) Engages primarily in the business of promoting economic, business, or industrial development through venture capital investments or the provision of financial or management assistance to operating companies.

(B) At all times maintains at least 50 percent of its assets in venture capital investments or commitments to make venture capital investments, and maintains or, assuming consummation of the equity investment to which the commercial bridge loan relates, will maintain a material equity interest in the operating company.

(C) Approves each loan made to an operating company through the venture capital company's board of directors, executive committee, or similar

policy body, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company's financing objectives and financial situation.

(D) Complies, when making the loan, with all applicable federal and state laws and rules or orders governing securities transactions including, but not limited to, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Corporate Securities Law of 1968.

(2) "Operating company" means a person that meets all of the following:

(A) Primarily engages, wholly or substantially, directly or indirectly through a majority owned subsidiary or subsidiaries, in the production or sale, or the research or development, of a product or service other than the management or investment of capital. This shall not include any of the following:

(i) A person that is either an individual or a sole proprietorship.

(ii) A person that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

(B) Uses all of the proceeds of the commercial bridge loan for the operations of its business.

(C) Approves each commercial bridge loan through its board of directors, executive committee, or similar policy board, in the exercise of its fiduciary duty, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company's financing objectives and financial situation.

(3) "Commercial bridge loan" means a loan that meets all of the following criteria:

(A) A loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program, whether secured by personal property or unsecured, the proceeds of which are intended by the operating company for use primarily for other than personal, family, or household purposes.

(B) Is made with a maturity date not to exceed three years, and in connection with or in bona fide contemplation of, an equity investment in the operating company.

(C) Is secured, if at all, solely by the operating company's business assets, exclusive of any real property.

(D) Is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(4) For purposes of paragraph (1), "venture capital investment" is an acquisition of securities in an operating company that a person, an investment adviser of the person, or an affiliated person of either, has or obtains management rights to.

(5) "Equity security" shall have the same meaning as in Section 3(a)(11) of the federal Securities Exchange Act of 1934.

(c) For purposes of paragraph (3) of subdivision (b), for the purposes of determining whether a loan is a commercial bridge loan, a venture capital

company may rely on any written statement of intended purposes signed by the operating company. The statement may be a separate statement signed by the operating company or may be contained in another document signed by the operating company, but in each case it shall be approved by its board of directors, executive committee, or similar policy body. The venture capital company may not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(d) For purposes of subparagraph (A) of paragraph (3) of subdivision (b), the principles set forth in Section 22551 shall be used to determine whether the specified amount of a commercial bridge loan is a bona fide principal amount.

(e) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury, and conflicts of interest.